

MARTIAL JUSTICE for ALL?

Lebanon's Military Court: A "State of Martial Law"
Within a "State of Law"



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Almost daily, Lebanon's media outlets release breaking news stories about an investigating judge for the military court having leveled an accusation against someone, about the court sentencing someone for a misdeed or about the Military Court of Cassation (MC) having finally agreed to release someone from detention. While one does not expect that issues related to military justice should be the story du jour, much less hold a central position among Lebanon's general public, reality is quite different. Considering that a substantial number of the activities which comprise the military justice system are related variously to the political and sectarian conflicts Lebanon experiences, it appears the MC is functioning increasingly as if it were the country's undisputed provider of justice.

Again, however, reality is markedly different. In a country that defines itself constitutionally as "a founding and active member of the United Nations Organization [that...] abides by its covenants and by the Universal Declaration of Human Rights..." it is typical for Lebanon's military court (as a specialized purveyor of "justice by exception") to remain intimately involved in the day-to-day lives of citizens. In the words of a former minister of justice, "I don't understand the wisdom of bringing a civilian before the military court because of a banal car accident or a fight between a civilian and a military [individual] over a real estate issue."¹

There is certainly no novelty involved with the debate over the expanded mandate of the military justi-

¹*Al-Balad*. May 12, 2014. Of note, former Minister of Justice Chakib Kortbawi made the statement. Mr. Kortbawi did not fail during his term as head of the Beirut Bar Association in the mid-1990s to highlight the fact that "Martial justice is a special justice and its mandate should be limited to military issues only." *An-Nahar*. December 19, 1995.

ce system. Back in 1968—as if by chance—the Lebanese parliament realized:

[Since] the promulgation of the Martial Punishment Law on January 2, 1946, several amendments [...] were made in virtue of other laws or decrees.... [The] succession of these amendments gets to a point which requires...for the sake of clarity that [the amendments] be [revised to constitute] a new [legal] text. ²

² Minutes of the Lebanese Parliament.

Actually, there was nothing random involved with the parliament's awakening back in 1968, as that year was critical to Lebanon for at least two important reasons. First, it followed the 1967 Arab debacle against Israel. Second, it preceded the 1969 Cairo Agreement between the Lebanese authorities and the PLO, which allowed the PLO the use of some Lebanese territory in its fight against Israel. To add even more intrigue, as if by divine intervention, the president signed that new law into effect on a date that would soon become iconic in Lebanon: April 13!

Today, it could be said that those coincidences are little more than issues that might be of some interest to historians. Regardless, the expanded mandate of the military justice system mentioned above does not refer to such coincidences any more often than it does to ordinary motor vehicle accidents involving civilian and military drivers. In fact, the issue has evolved into a situation that can only be assessed from a human rights perspective. One description of this situation that remains valid and germane was apparent in the observations made by the UN International Covenant on Civil and Political Rights in May 1997:

The Committee expresses concern about the broad scope of the jurisdiction of military courts in Lebanon, especially its extension beyond disciplinary matters and its application to civilians. It is also concerned about the procedures followed by these military courts, as well as the lack of supervision of the military courts' procedures and verdicts by the ordinary courts. The State party should review the jurisdiction of the military courts and transfer the competence of military courts, in all trials concerning civilians and in all cases concerning the violation of human rights by members of the military, to the ordinary courts.

While that observation ultimately became the mantra for a variety of human rights assessments conducted in Lebanon by

domestic and international activities, the UN observation also became something of a "dead letter" that has been resurrected occasionally by human rights oriented activists. Interestingly, another unique "coincidence" occurred just a few years after those words were published which seemed to confirm their validity. In August 2001, Lebanese security forces launched a massive effort to arrest individuals opposed to Syria's occupation of Lebanon, an initiative that netted some 200 youngsters. When those prisoners were referred to trial before the MC, a judicial battle erupted over the breadth of the MC's mandate. The encounter peaked when the MC attempted to overturn a decision by the Court of Cassation to deny it the latitude to try the civilians that had been apprehended. The situation became increasingly dramatic until the president of the Court of Cassation, frustrated at mounting political-security interference, submitted his resignation. Although the issue was "closed" soon afterward *à la libanaise*, it framed the debate over the notion of the country being a "state of law" compared with a "state of *martial law*."³

Although debates about amending Lebanon's Code of Military Justice undoubtedly occurred well before August 2001, its development relative to security and justice vis-à-vis the MC's role in Lebanon's judicial system gave that debate substantial momentum.⁴ In this sense, the "National Plan of Action on Human Rights," released after years of elaboration in a pompous function organized in the Lebanese parliament to commemorate Human Rights Day on December 10, 2012, offered nothing new:

Regarding the [application of]

³ Understandably, the competition between those in favor of a "state of law" and those who oppose that view is not a new issue. In November 2000, the cabinet held a session to discuss the judiciary from a general perspective. That same day, *an-Nahar* published a piece which mentioned:

Ten years after the Taif Agreement which reasserted the autonomy of the judicial power, the Lebanese judicial system still lacks confidence [from individuals and agencies at the] local and international levels. [That has been] proven by consecutive calls to ascertain its independence. This is tantamount to highlighting the influence the political sphere continues to exert on the judicial sphere."

With respect to military justice, the same article continues:

Despite the fact that there is governmental will to review all of the issues related to the judiciary, it seems that modification of some texts that pertain to the military law body will not be on the cabinet's agenda for discussion. [Similarly, it appears] that some circles within the power elite expressed their reservations on the subject, as they fear that these amendments will diminish the power of the military justice system.

⁴ A good example can be found in remarks made by Abdallah Al-Yafi during a meeting of the "Committee of Administration and Law." Held on November 19, 1947, the meeting was dedicated to a discussion of some amendments to the military punishment code:

Before the parliament starts discussing these provisions related to the Military Punishment Code, I would like the government to tell us the rationale behind these amendments. I notice that these amendments tend to enlarge the prerogatives of the military courts, [but in reality,] the military courts are courts of exception and should only be given large prerogatives during times of war.

Minutes of the Lebanese Parliament.

military justice, the laws still permit civilians to be prosecuted by the military courts. Those courts do not offer the required judicial guarantees and they are not required to provide any rationale for the sentences they prescribe. This places those courts outside the realm of legal supervision.

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Of course, the overarching issue of the MC's alarmingly elastic and questionable practices consists of far more than intellectual discussions and impassioned debates. A core consideration regarding the role it plays in justice as a whole is that within the "state of exception" culture that prevails in several Lebanese circles, some proponents believe the MC's mandate is justifiable because of "exceptional situations" in Lebanon, which include a wide range of threats to the country and its citizens.⁵ However, not only is it impossible to sustain such logic, but it should also be refuted whenever and wherever possible. In effect, that perspective is based on the pure "fallacy of redundancy," as it holds that because of the prevalence of that so-called exceptional situation, the Lebanese must keep things as they are. Ultimately, the assertion that the judiciary must reflect the exigencies imposed by those exceptional situations must be considered false, as it implies vis-à-vis the Lebanese experience (i.e., the failure to progress beyond the "state of exception" supposedly imposed by the civil war) that the "rule of the exception" will exist in Lebanon in perpetuity.

⁵ Consider the arguments used by military prosecutor Nasri Lahhoud: Stating that Western countries no longer have military courts does not apply to Lebanon. This is a model with which Lebanon has nothing to do, as the countries of the third world and the Arab countries have not disbanded their military courts. Countries surrounding Israel, such as Egypt, Syria and Jordan, still have military courts even if some of those countries are at peace with Israel. The fact is, how do you want Lebanon to disband its military courts [when it] is still at war with Israel, [particularly since] the [Israeli] enemy [never fails] to take advantage [of] our democratic system by infiltrating us and challenging our security and civil peace?
An-Nahar. March 23, 2001.

The expanded role of military justice is just one aspect of a debate that must take place in Lebanon. Nevertheless, it provides an important point of entry into the broader discussion of Lebanon's judicial and military institutions. That tendency should stimulate action among Lebanese citizens. Indeed, the failure of Lebanon's legislature to produce a new body of laws that regulate the application of military justice does not result from a lack of ideas, suggestions or even draft laws. Instead, it is due primarily to a systemic

reluctance to review and update our understanding of concepts such as “justice,” “security,” “state of law” and “state authority.”⁶

⁶ Three major military court reforms are on the table today. These initiatives include (1) suggestions by the “Law Modernization Committee” (March 2012), (2) the draft law submitted by MP Elie Kayrouz on behalf of the Lebanese Forces parliamentary bloc (April 2013) and (3) the draft law submitted by a committee organized by former Minister of Justice Chakib Kortbawi (who served as Minister of Justice in the second cabinet of former PM Mikati (July 2011 – March 2013)).

Based on the foregoing and in conjunction with the efforts being made by UMAM D&R to couple its work on Lebanon’s recent past (which ranges essentially from the civil war period to the present) with current issues, it fielded a new project titled *Martial Justice for All? Lebanon’s Military Court: A “State of Martial Law” Within a “State of Law.”* Similar to other UMAM D&R projects, that initiative—which enjoys EU support—seeks to tackle the subject from three different angles: documentation, research and awareness raising/advocacy. Notably, the documentation component is already available on the Memory at Work website, to which was recently added a section on “Field Justice – Military Justice in Lebanon.”⁷ Since the new section is receiving regular updates, we want its research component to be a participatory process. Moreover, we look forward to the results of that effort appearing soon. With respect to raising awareness and advocacy, this enhanced effort brings us back to present-day Lebanon, which is experiencing a new phase of the old turmoil. It again prompts the question, is now the right time to highlight this issue, which lies at the intersection of “justice” and “security?” ⁷www.memoryatwork.org

Clearly, this is not the first time UMAM D&R has had to answer such a question. Since its inception, the organization has engaged in projects related to Lebanon’s civil war and the presence of the war’s legacy in our everyday life. On each occasion, the question we are asked most often is always the same: is now the “right time” to talk about this issue? Don’t you think such a debate would impose harmful side effects...? Our reply has always remained consistent: Since there will never be a “right moment” per se, there is no need to postpone the inevitable. As proof of the futility of waiting for just the right moment, since the war ended, we have witnessed periodically that the Lebanese have experienced sudden awakenings to issues they neglected or “forgot” to address. Over time, rather than simply vanishing and losing importance, they burn even hotter....